

AMENDED IN SENATE AUGUST 4, 2014

AMENDED IN SENATE JUNE 9, 2014

AMENDED IN ASSEMBLY MAY 5, 2014

AMENDED IN ASSEMBLY APRIL 21, 2014

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 2135**

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**Introduced by Assembly Member Ting**

February 20, 2014

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An act to amend Sections 54220, 54223, 54225, 54226, and 54227 of, and to add Sections 54222.5 and 54233 to, the Government Code, relating to local government.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2135, as amended, Ting. Surplus land: affordable housing.

(1) Existing law prescribes requirements for the disposal of surplus land by a local agency, as defined. Existing law requires a local agency disposing of surplus land to negotiate in good faith with certain entities that provided notice of a desire to purchase or lease the land and, if the price or terms cannot be agreed upon within a period of not less than 60 days with those entities, the local agency may dispose of the surplus land without fulfilling further requirements, as specified. Existing law authorizes a local agency selling surplus land for specified purposes to specified entities, including, but not limited to, low- and moderate-income housing, to provide a payment period of up to 20 years in a sales contract or trust deed. Existing law requires a local

agency disposing of surplus land to give first priority in a purchase or lease to an entity agreeing to use the site for housing for persons of low or moderate income, except as specified. Existing law specifies that these and other related provisions are not to be interpreted to empower a local agency to sell or lease surplus land at less than fair market value.

This bill would require an entity proposing to use the surplus land for developing low- and moderate-income housing to agree to make available not less than 25% of the total number of units developed on the parcels at affordable housing cost or affordable rent for a period of at least 55 years to lower-income households, as those terms are defined in existing law. This bill would require a local agency to give first priority in disposing of the surplus land to an entity that agrees to these requirements. This bill would also require these requirements, as specified, to be contained in a covenant or restriction recorded against the surplus land at the time of sale, to run with the land, and be enforceable, against any owner who violates the covenant or restriction and each successor-in-interest who continues the violation, by a residents' association, as specified, and certain individuals, that include, but are not limited to, a resident of a unit subject to these requirements. This bill would increase the minimum time that an agency disposing of surplus land is required to conduct negotiations with certain entities desiring to purchase or lease the surplus land from 60 to 90 days. This bill would require, if the local agency does not agree to price and terms with those certain entities and the surplus land is used for the development of 10 or more residential units, the entity or a successor-in-interest that received the surplus land to provide not less than 15% of the total number of units developed on the parcels at affordable housing cost or affordable rent, at terms similar to an entity that received first priority for providing not less than 25% of the total number of units at affordable housing cost or affordable rent, as specified.

This bill would permit the payment period for surplus land sold for low- and moderate-income housing purposes to exceed 20 years, subject to limits related to land use requirements for low- or moderate-income housing.

This bill would delete the statement that these provisions are not to be interpreted to empower a local agency to sell or lease surplus land at less than fair market ~~value~~, *value, and would provide that a sale or lease at or less than fair market value, as specified, shall not be construed as inconsistent with an agency's purpose.* By increasing the

duties of local officials in connection with sales and leases of surplus land, this bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     *SECTION 1. Section 54220 of the Government Code is*  
2     *amended to read:*

3     54220. (a) The Legislature reaffirms its declaration that  
4     housing is of vital statewide importance to the health, safety, and  
5     welfare of the residents of this state and that provision of a decent  
6     home and a suitable living environment for every Californian is a  
7     priority of the highest order. The Legislature further declares that  
8     there is a shortage of sites available for housing for persons and  
9     families of low and moderate income and that surplus government  
10    land, prior to disposition, should be made available for that  
11    purpose.

12    (b) The Legislature reaffirms its belief that there is an  
13    identifiable deficiency in the amount of land available for  
14    recreational purposes and that surplus land, prior to disposition,  
15    should be made available for park and recreation purposes or for  
16    open-space purposes. This article shall not apply to surplus  
17    residential property as defined in Section 54236.

18    (c) The Legislature reaffirms its declaration of the importance  
19    of appropriate planning and development near transit stations, to  
20    encourage the clustering of housing and commercial development  
21    around such stations. Studies of transit ridership in California  
22    indicate that a higher percentage of persons who live or work  
23    within walking distance of major transit stations utilize the transit  
24    system more than those living ~~elsewhere~~. *elsewhere, and that lower*  
25    *income households are more likely to use transit when living near*  
26    *a major transit station than higher income households. The sale*

1 *or lease of surplus land at less than fair market value to facilitate*  
2 *the creation of affordable housing near transit is consistent with*  
3 *goals and objectives to achieve optimal transportation use. The*  
4 Legislature also notes that the Federal Transit Administration gives  
5 priority for funding of rail transit proposals to areas that are  
6 implementing higher-density, ~~mixed-use~~ *mixed-use, and affordable*  
7 development near major transit stations.

8 **SECTION 1.**

9 **SEC. 2.** Section 54222.5 is added to the Government Code, to  
10 read:

11 54222.5. An entity proposing to use the surplus land for  
12 developing low- and moderate-income housing shall agree to make  
13 available not less than 25 percent of the total number of units  
14 developed on the parcels at affordable housing cost, as defined in  
15 Section 50052.5 of the Health and Safety Code, or affordable rent,  
16 as defined in Section 50053 of the Health and Safety Code, to  
17 lower income households, as defined in Section 50079.5 of the  
18 Health and Safety Code. Rental units shall remain affordable to,  
19 and occupied by, lower income households for a period of at least  
20 55 years. The initial occupants of all ownership units shall be lower  
21 income households, and the units shall be subject to an equity  
22 sharing agreement consistent with paragraph (2) of subdivision  
23 (c) of Section 65915. These requirements shall be contained in a  
24 covenant or restriction recorded against the surplus land at the time  
25 of sale, which shall run with the land and shall be enforceable,  
26 against any owner who violates a covenant or restriction and each  
27 successor in interest who continues the violation, by any of the  
28 following:

- 29 (a) The local agency that disposed of the property.  
30 (b) A resident of a unit subject to this section.  
31 (c) A residents association with members who reside in units  
32 subject to this section.  
33 (d) A former resident of a unit subject to this section who last  
34 resided in that unit.  
35 (e) An applicant seeking to enforce the covenants or restrictions  
36 for a particular unit that is subject to this section, if the applicant  
37 conforms to all of the following:  
38 (1) Is of low or moderate income, as defined in Section 50093  
39 of the Health and Safety Code.  
40 (2) Is able and willing to occupy that particular unit.

1 (3) Was denied occupancy of that particular unit due to an  
2 alleged breach of a covenant or restriction implementing this  
3 section.

4 (f) A person on an affordable housing waiting list who is of low  
5 or moderate income, as defined in Section 50093 of the Health  
6 and Safety Code, and who is able and willing to occupy a unit  
7 subject to this section.

8 ~~SEC. 2.~~

9 SEC. 3. Section 54223 of the Government Code is amended  
10 to read:

11 54223. After the disposing agency has received notice from  
12 the entity desiring to purchase or lease the land, the disposing  
13 agency and the entity shall enter into good faith negotiations to  
14 determine a mutually satisfactory sales price or lease terms. If the  
15 price or terms cannot be agreed upon after a good faith negotiation  
16 period of not less than 90 days, the land may be disposed of without  
17 further regard to this article, except that Section 54233 shall apply.

18 ~~SEC. 3.~~

19 SEC. 4. Section 54225 of the Government Code is amended  
20 to read:

21 54225. Any public agency selling surplus land to an entity  
22 described in Section 54222 for park or recreation purposes, for  
23 open-space purposes, for school purposes, or for low- and  
24 moderate- income housing purposes may provide for a payment  
25 period of up to 20 years in any contract of sale or sale by trust deed  
26 for the land. The payment period for surplus land sold for housing  
27 for persons and families of low and moderate income may exceed  
28 20 years, but the payment period shall not exceed the term that the  
29 land is required to be used for low- or moderate-income housing.

30 ~~SEC. 4.~~

31 SEC. 5. Section 54226 of the Government Code is amended  
32 to read:

33 54226. This article shall not be interpreted to limit the power  
34 of any local agency to sell or lease surplus land at fair market value  
35 or at less than fair market ~~value~~. *value, and any such sale or lease*  
36 *at or less than fair market value consistent with this article shall*  
37 *not be construed as inconsistent with an agency's purpose.* No  
38 provision of this article shall be applied when it conflicts with any  
39 other provision of statutory law.

1     ~~SEC. 5.~~

2     *SEC. 6.* Section 54227 of the Government Code is amended  
3 to read:

4     54227. (a) In the event that any local agency disposing of  
5 surplus land receives offers for the purchase or lease of that land  
6 from more than one of the entities to which notice and an  
7 opportunity to purchase or lease shall be given pursuant to this  
8 article, the local agency shall give first priority to the entity that  
9 agrees to use the site for housing that meets the requirements of  
10 Section 54222.5. If the local agency receives offers from more  
11 than one entity that agrees to meet the requirements of Section  
12 54222.5, then the local agency shall give priority to the entity that  
13 proposes to provide the greatest number of units that meet the  
14 requirements of Section 54222.5 at the deepest level of  
15 affordability.

16     (b) Notwithstanding subdivision (a), first priority shall be given  
17 to an entity that agrees to use the site for park or recreational  
18 purposes if the land being offered is already being used and will  
19 continue to be used for park or recreational purposes, or if the land  
20 is designated for park and recreational use in the local general plan  
21 and will be developed for that purpose.

22     ~~SEC. 6.~~

23     *SEC. 7.* Section 54233 is added to the Government Code, to  
24 read:

25     54233. If the local agency does not agree to price and terms  
26 with an entity to which notice and an opportunity to purchase or  
27 lease are given pursuant to this article and disposes of the surplus  
28 land to an entity that uses the property for the development of 10  
29 or more residential units, the entity or a successor-in-interest shall  
30 provide not less than 15 percent of the total number of units  
31 developed on the parcels at affordable housing cost, as defined in  
32 Section 50052.5 of the Health and Safety Code, or affordable rent,  
33 as defined in Section 50053 of the Health and Safety Code, to  
34 lower income households, as defined in Section 50079.5 of the  
35 Health and Safety Code. Rental units shall remain affordable to,  
36 and occupied by, lower income households for a period of at least  
37 55 years. The initial occupants of all ownership units shall be lower  
38 income households, and the units shall be subject to an equity  
39 sharing agreement consistent with the provisions of paragraph (2)  
40 of subdivision (c) of Section 65915. These requirements shall be

1 contained in a covenant or restriction recorded against the surplus  
2 land prior to land use entitlement of the project, and the covenant  
3 or restriction shall run with the land and shall be enforceable,  
4 against any owner who violates a covenant or restriction and each  
5 successor in interest who continues the violation, by any of the  
6 entities described in subdivisions (a) to (f), inclusive, of Section  
7 54222.5.

8 ~~SEC. 7.~~

9 *SEC. 8.* If the Commission on State Mandates determines that  
10 this act contains costs mandated by the state, reimbursement to  
11 local agencies and school districts for those costs shall be made  
12 pursuant to Part 7 (commencing with Section 17500) of Division  
13 4 of Title 2 of the Government Code.